

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of

Telephone Company-Cable Television
Cross Ownership Rules,
Sections 63.54-63.58

and

Amendments of Parts 32, 36, 61, 64,
and 69 of the Commission's Rules to
Establish and Implement Regulatory
Procedures for Video Dialtone
Service

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CC Docket No. 87-266

RM - 8221

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF
COMPAQ COMPUTER CORPORATION**

Compaq Computer Corporation ("Compaq") hereby replies to the comments filed in response to the Third Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

¹ Telephone Company-Cable Television Cross Ownership Rules, Sections 63.54-63.58 and Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, CC Docket No. 87-266, RM-8221, FCC 94-269 (released Nov. 7, 1994) ("Notice").

In the Notice, the Commission sought comment regarding the digital video dialtone proposal submitted by GTE.² As described by the Commission, "GTE's proposal requires end user subscribers to purchase or rent a set-top converter, both because the converter is needed to view compressed digital video signals on today's televisions and because some channels may be encrypted."³ GTE's video dialtone Section 214 application indicates that it will provide set-top converters as unregulated customer premises equipment ("CPE") and will permit subscribers to obtain converters from other sources.⁴

In its comments, Compaq observed that the GTE proposal demonstrates that it is possible to implement digital technology in a manner that is consistent with the Commission's CPE rules, which require that customer premises equipment be provided on an unbundled, competitive basis.⁵ Compaq therefore urged the Commission to require that any set-top box deployed in the video dialtone environment be provided in this matter.⁶

Only one party -- AT&T -- has taken a contrary position. In its comments, AT&T recognized that a video dialtone set-top box is CPE and, under the Commission's rules, cannot be offered "as a part of a tariffed video dialtone

² GTE Section 214 Application, File No. W-P-C-6955 (May 24, 1994).

³ Notice ¶ 269.

⁴ GTE Section 214 Application at 9.

⁵ Comments of Compaq Computer Corporation ("Compaq Comments") at 3.

⁶ Id.

service."⁷ However, AT&T went on to suggest that requiring local exchange carriers to offer the set-top box on an unbundled, non-regulated basis "could affect the potential viability of any video dialtone service utilizing digital technology."⁸ Therefore, AT&T concluded, "[t]he use of the set-top box may require a change in the Commission's [CPE unbundling and detariffing] rules."⁹

The Commission has repeatedly held that a party seeking elimination of the requirement that CPE be provided on an unbundled, nonregulated basis bears a heavy burden: it must demonstrate that bundling is necessary to make the delivery of a basic communications service possible.¹⁰ AT&T has failed to meet this burden. Indeed, it has made no attempt to substantiate its claim that application of the Commission's rules would "affect the potential viability" of video dialtone service. In light of GTE's representation that it can and will provide the set top box in a manner that is consistent with existing Commission rules, AT&T's unsubstantiated assertion should be given no weight by the Commission.

The Commission's long experience in promoting a competitive CPE market provides ample evidence of the feasibility and benefits of equipment

⁷ AT&T Comments at 5 n.2.

⁸ Id.

⁹ Id.

¹⁰ See, e.g., Amendment to Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Phase II, Memorandum and Order on Reconsideration, 3 FCC Rcd 1150, 1167 (1988); Nynex Telephone Companies Tariff F.C.C. No. 1, 8 FCC Rcd 7684, 7687-89.

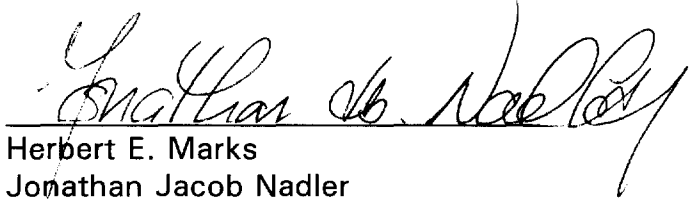
unbundling in the telephony environment. This plainly is not the time for the Commission to retreat from its long-standing commitment to those rules. To the contrary, the convergence of the Video Dialtone and Cable Compatibility proceedings provides an opportunity for the Commission to reaffirm the applicability of its pro-competitive unbundling rules in the telephony context, and to expand those rules to the cable environment -- with the ultimate goal of creating a "Part 68 for Cable."

The consequences of the Commission's decisions in these proceedings are not limited to the video dialtone set-top box or the proposed cable set-back box. Technological innovation and market forces are leading to the migration of functionality from monopoly controlled conduits to competitively provided equipment. If this process is allowed to proceed, advanced functionality will increasingly be incorporated into televisions, VCRs, and personal computers. However, if local exchange carriers and cable system operators are allowed to bundle transmission service with equipment, they will be able to use their monopoly power to "trap" this functionality inside their networks. The end result will be to deny consumers the benefits of increased innovation and lower prices that result from a competitive equipment market.

By adopting consistent, pro-competitive rules in the Video Dialtone and Cable Compatibility proceedings, the Commission can ensure that all consumers of multi-channel video programming and advanced communications

services -- whether delivered over telephone networks or cable systems -- will have the benefit of a competitive equipment market.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Christopher Tygh, do hereby certify that copies of the foregoing Reply of Compaq Computer Corporation, in Docket No. 87-266 and RM-8221, were sent via first class mail, postage paid, to the following on this 17th day of January, 1995:

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